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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1975

No. 631

GEORGE ALDER,
et al.,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and
Rehabilitation, Dade County, Florida, et al.,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Respondent, State of Florida on relation of Robert L. Shevin, Attorney General of Florida, moves this Court for an order denying this Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Petitioners and the Respondent, West Flagler Associates, Ltd., are licensees of the Florida Division of Pari-Mutuel Wagering. Absent the express statutory authoriztion and largesse of Chapter 550, Florida Statutes, neither party could legally operate their respective businesses.

The Petitioners have all signed contracts with the Respondent West Flagler to provide a certain number of greyhounds during specified West Flagler racing dates. The "handle" or amount bet by the public at West Flagler for the 1974 racing season was $79,824,524. The State of Florida received approximately $5,859,919.88 for the 1974 - 75 fiscal year from the West Flagler track operation.

West Flagler has been awarded the pertinent racing dates of July 3, 1975 - September 4, 1975. The racing dates in this South Florida area are awarded, and operated by the various tracks so as to include the entire calendar year. Another Miami greyhound track was scheduled and did open on September 5, 1975.

Respondent, West Flagler, owner and operator of a greyhound racing facility, filed a verified complaint in the 11th Florida Judicial Circuit on June 30, 1975, seeking a temporary and permanent injunction against Petitioners to comply with the contracts between Petitioners and West Flagler. Among other terms, the contracts required Petitioners to provide a product - greyhounds - to race at the West Flagler Kennel Club commencing July 3, 1975. The injunctive relief was

premised upon specific performance of the contract and Petitioners allegedly tortious and conspiratorial actions in violation of Ch. 542, Florida Statutes [anti-trust].

The temporary relief sought by West Flagler consisted of: 1) a temporary injunction without notice against Petitioners removing the greyhounds, under contract to West Flagler, from the Court's jurisdiction; 3) a temporary mandatory injunction requiring the Petitioners having contracts with West Flagler to produce the greyhounds contracted for by West Flagler; 3) a request to sequester the greyhounds if necessary, and 4) other additional relief.

The State of Florida and Dade County were granted status as party Intervenors-Plaintiffs on July 3, 1975. The State of Florida's interest in the non-operation of the greyhound track was two-fold; 1) a $64,000/day revenue loss; and 2) the public confidence in the State's ability to properly regulate and control the pari-mutuel industry. Dade County's interest existed in the money derived from the pari-mutuel system.

On June 30, 1975, West Flagler was granted an ex parte injunction against Petitioner removing contracted greyhounds from the circuit court's jurisdiction. A $5,000 bond was provided. A hearing was also set for July 3, 1975, on the mandatory temporary injunction.

Petitioners appeared at the July 3, hearing to announce that a petition for removal had been filed. The circuit court granted their request not to participate and to leave. The circuit court then heard testimony from the state's witnesses and the

West Flagler witnesses,

The federal court at 5:55 p.m. on July 3, 1975, sua sponte remanded the case. The circuit court entered its order granting the mandatory temporary injunction at 6:10 p.m. on July 3, 1975. The order further recited that: (a) The Court has jurisdiction of the subject matter and the parties and the equities were with the Respondents - Plaintiffs and against the Petitioner - Defendants. (b) The individual kennel owners had written contracts to furnish dogs for the July 3, 1975, racing meet; the State of Florida is suffering an irretrievable daily tax revenue loss of $64,000; plaintiff would be irreparably damaged by the kennel owners' nonperformance and "the economy of this area is materially affected." (c) The contracts involve special and unique chattels not replaceable; denial of the mandatory injunction would irreparably damage West Flagler; and "the balance of convenience and public interest" compelled a ruling for West Flagler. (d) The application for temporary mandatory injunction was granted; the 30 contracting kennel owners were ordered to supply the dogs and "comply" with their contracts. (e) The 30 kennel owners were required to file their entries by the following morning, July 4th at 10:00 A.M. (f) Upon the kennel owners' failure to file entries, their dogs (most of which were already located at a facility owned in part by West Flagler) were to be sequestered and a receiver would be appointed to control, enter and race such dogs, his costs and fees to be assessed against the kennel owners. (g) The kennel owners were given eight days to answer the state court complaint. (h) The kennel owners were enjoined from removing any greyhound from the West Flagler facility.

The Petitioners failed and refused to abide by the circuit court injunction. The circuit court scheduled a July 7, 1975, contempt proceeding. Petitioners appeared and stayed at this hearing. On July 7 the Petitioners filed a notice of interlocutory appeal.

The circuit court reheard the State's witnesses and West Flagler's witnesses on July 7 and reaffirmed all orders entered on July 3. Petitioners fully participated in the July 7 hearing by cross-examining witnesses and presenting witnesses of their own. The Petitioners' motions to dissolve the injunction, to dismiss and to quash were denied.

The circuit court then proceeded to hear testimony concerning the civil contempt charges. Twenty of the Petitioners admitted, under oath, their willful violation of the court's injunction. The remaining Petitioners testified and from the proceeding the circuit court judge determined their violations of the injunction were willful. Eighteen of the Petitioners were incarcerated on July 8 and the others were excused due to health. The circuit court imposed compensatory fines of $7,500 per Petitioner for the first day and $2,500 per day thereafter that the Petitioners remained in contempt.

Petitioners then filed an emergency interlocutory appeal in the Florida Third District Court of Appeal on July 7, 1975, and unsuccessfully sought an ex parte stay order of the circuit court proceedings. The Petitioners then successfully sought an ex parte writ of habeas corpus from the Chief Justice, Florida Supreme Court, on July 10, 1975.

On July 14 the Florida Supreme Court ordered the Florida District Court of Appeal proceedings transferred to it. The Florida Supreme Court affirmed the mandatory temporary injunction and contempt orders of the circuit court on July 21, 1975.

Petitioners then filed three interlocutory appeals to the Florida Third District Court of Appeal on August 4, 1975. The three appeals directly involved the validity of the injunction and the contempt proceedings. The District Court of Appeal issued a show cause order to the Petitioners on August 13, 1975 as to why the appeals shouldn't be dismissed. On September 11, 1975, the District Court of Appeal transferred the three interlocutory appeals to the Florida Supreme Court. The three appeals are pending in the Florida Supreme Court on a Motion to Dismiss.

Petitioners then filed, on November 17, 1975, a separate and fourth interlocutory appeal directly involving the validity of the injunction and contempt proceedings. This appeal is pending in the Florida Third District Court of Appeal.

Petitioners now seek review of the Florida Supreme Court's July 21, 1975, decision in this Court - the United States Supreme Court. The same basic issues of due process, involuntary servitude, and jurisdiction are now pending in four different courts.

ISSUES PRESENTED

ISSUE I

Whether the jurisdictional basis mandated in 28 U.S.C. §1257(3) governing review of state supreme court decisions has been met.

ISSUE II

Whether the jurisdictional basis required by Rule 19 governing review of petitions for writs of certiorari has been met.

OPINIONS BELOW

The Florida Supreme Court opinion rendered on July 21, 1975, and its subsequent opinion denying rehearing on July 29, 1975, are reported at 318 So.2d 732 (Fla. 1975).

Petitioners have appended a July 10, 1975, order of the Circuit Court reaffirming its July 3, 1975, order granting a temporary mandatory injunction. This order has not been reviewed or considered by the Florida Supreme Court and is presently pending before the Florida Supreme Court in Wilson v. West Flagler Associates, Ltd., et al., No. 48,062.

JURISDICTION - OBJECTIONS TO

The Respondent, State of Florida, files this brief pursuant to Rule 24(1) in opposition to the Petition for Writ of Certiorari on the grounds that: 1) no basis for review exists by this Court pursuant to 28 U.S.C. §1257(3); 2) no basis for review exists by this Court pursuant to Rule 19; 3) no substantial federal question has been raised. This Court does not have jurisdiction over the Petition for a Writ of Certiorari filed herein.

The issues Petitioners seek this Court to review are now pending before two Florida appellate courts. The Florida Supreme Court has before it for review in Wilson et al., v. West Flagler Associates, Ltd., et al., No. 48,062 three consolidated interlocutory appeals involving the same contempt, due process, and 13th Amendment issues raised here. See App. 5 - 11. Petitioners have again re-

quested the Florida Supreme Court to review the July 8, 1975, contempt order that is before this Court in this case. See, App. 5.

The Florida Third District Court of Appeal has before it for review in Florida Greyhound Owners & Breeders Assoc., Inc., et al., v. West Flagler Associates, Ltd., et al., No. 75-1784, another interlocutory appeal involving the same contempt, due process, and 13th Amendment issues raised here. See App. 18.

ISSUES - ARGUMENT

ISSUE I

Whether the jurisdictional basis mandated in 28 U.S.C. §1257(3) governing review of state supreme court decisions has been met.

Congress has prescribed certain jurisdictional standards for this Court in 28 U.S.C. §1257(3) which require dismissal of this Petition for a Writ of Certiorari:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant

> to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (e.s.)

The decision of the Florida Supreme Court sought to be reviewed is not a final judgment or decree within the purview of 28 U.S.C. §1257(3). The federal question issue of this section is addressed under Issue II, infra, and will not be duplicated here.

A "final judgment" for the purposes of this statute is a restriction upon this Court's limited power to review state supreme court decisions that result in an intrusion upon fundamental concepts of federalism. Review of a state court judgment is precluded "where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has been finally adjudicated by the highest Court of the State." Cox Broadcasting Corp. v. Cohen, 420 U.S. 469 (1975).

This requirement of finality is not a technicality to be scorned for it is designed to avoid piecemeal review, federal intrusion into state affairs, and the mischief of economic waste and delayed justice. North Dakota Pharmacy Bd. v. Snyder's Stores, 414 U.S. 156 (1973). The very issues Petitioners present this Court are now being litigated in West Flagler Associates, Ltd., et al. v. Florida Greyhound Owners & Breeders, Inc., et al., No. 75-20902, 11th Florida Judicial

Circuit, and three combined new interlocutory appeals in Wilson, et al. v. West Flagler Associates, Ltd., et al., Florida Supreme Court, No. 48,062, and Florida Greyhound Owners & Breeders, Assoc., Inc. v. West Flagler Associates, Ltd., et al., No. 75-1784, Florida Third District Court of Appeal. See App. 14 and 18.

For a decision to be "final" it must fully determine the rights of the Petitioners and the fact that a decision leaves open additional constitutional questions militates against its finality. Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 (1948). In this instance, the Petitioners seek review of a temporary mandatory injunction that is today pending before two Florida appellate courts referenced above. The interlocutory decision sought to be reviewed is a far cry from final due solely to the Petitioners' efforts.

This Court has historically refused to intrude into the litigation process of state courts on an interlocutory basis. In Gibbons v. Ogden, 19 U.S. [6 Wheat] 848 (1921) a request to review a decision denying a motion to dissolve an injunction was rejected. E.g. Pepper v. Dunlap, 12 U.S. [51 How.] 46 (1855); Moses v. Mayor, 82 U.S. [15 Wall.] 357 (1872). A decision on an injunction leaves the entire case to be disposed of on its merits while maintaining the status quo to prevent any excessive or unnecessary injury. Georgia R. & Power Co. v. Decatur, 262 U.S. 432 (1932).

This interpretation of "finality" has never been rejected by this Court and was fully elaborated upon in Montgomery Bldg. &

Constr. Traders Council v, Ledbetter Erection Co., 344 U,S. 178 (1952).

> The provision of §1257 that only 'Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . .' has been carried in almost identical language since the Judiciary Act of 1789, 1 Stat 85, §25.
>
> * * *
>
> The distinction between a preliminary or temporary injunction and a final or permanent injunction was elementary in the law of equity. The classical concept was at once recognized and applied in Gibbons v. Ogden (US) supra. There is no room here for interpretation. The rule remains unchanged.
>
> True, as long as a temporary injunction is in force it may be as effective as a permanent injunction, and for that reason appeals from interlocutory judgments have been authorized by state legislatures and Congress. But such authorization does not give interlocutory judgments the aspect of finality here, even though we may have inadvertently granted certiorari. Baldwin Co. v. R. S. Howard Co. 256 U.S. 35, 40, 65 L.Ed. 816, 818, 41 S.Ct. 405.
>
> *It is argued that if this is

> not held to be a final decree or judgment and decided not, it may never be decided, because to await the outcome of the final hearing is to moot the question and to frustrate the picketing. However appealing such argument may be, it does not warrant us in enlarging our jurisdiction. Only Congress may do that. 344 U.S. at 180 - 81. (e.s.)

See also Gospel Army v. Los Angeles, 331 U.S. 543 (1947).

There are, however, four recognized but limited exceptions to this "finality" requirement that recognizes the subtlety that "finality" of an issue is apparent despite the necessity for continued litigation. None of these exceptions are applicable here. Whitus v. Georgia, 385 U.S. 547 (1967); Taggart v. Weinacker's, 397 U.S. 223 (1970).

Most recently, the exceptions were delineated in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), to be "very few" only when "additional [state] proceedings would not require the decision of other federal questions that might also require review by the Court at a later date." The alleged constitutional issues of due process, 13th Amendment, and contempt raised sub judice require further state court deliberations and the same issues are presently pending before the Florida Supreme Court and the Florida Third District Court of Appeal.

The four categories are: 1) when the federal issue is conclusively decided regardless of further "formal" trial proceedings;

2) when the federal issue has been decided and the issue cannot be reviewed later; and 4) when the federal issue has been decided and reversal of the state decision would preclude future trial proceedings. All of these exceptions pertain to situations where the state decision on a federal issue might seriously erode federal or national policy if not immediately reviewed. Moreover, this proceeding rests on a disputed issue of fact that demands further hearings and does not involve coveted First Amendment rights. Organization for a Better Austin v. Keefe, 402 U.S. 415 (1975); Cox Broadcasting Corp. v. Cohen, supra, at 486, n. 13.

The "penumbral area" of the §1257 "finality" concept does not encompass this interlocutory decision of the Florida Supreme Court in Wilson v. Sandstrom, 317 So.2d 732 (Fla. 1975), especially when the same issues are pending before two Florida appellate courts and involve factual disputes deserving further evidentiary resolution scheduled in West Flagler Associates, Ltd., et al., v. Florida Greyhound Assoc., Inc., et al., Florida 11th Judicial Circuit, 75-20902. To grant this Petition would permit an unbearable intrusion into the state judiciary that is clearly forbidden by the jurisdictional limitations placed on this Court.

Moreover, Petitioners carry the keys to a final hearing on a permanent injunction and the necessary further evidentiary hearings that will produce a final and conclusive decision of all factual and legal issues not now before this Court. For reasons known only to Petitioners they have avoided a final hearing that would produce the final results to maintain a forum here that espouses noble but facially and substantively defective

contentions. The Petitioners need only be directed by this Court's statement in Montgomery Bldg. & Constr. Trades Council v. Ledbetter Erection Co., 344 U.S. 178 (1952):

> Furthermore, the interlocutory decree could have been readily converted into a final decree, and the appeal could have proceeded without question as to jurisdiction just as effectively and expeditiously as the appeal from the interlocutory injunction was pursued in this case. 344 U.S. at 182.

The decision presented this Court is not within the purview of 28 U.S.C. §1257(3).

ISSUE II

> Whether the jurisdictional basis required by Rule 19 governing review of petitions for writs of certiorari has been met.

Rule 19 permits review of a petition for writ of certiorari, not as a matter of right, but of "sound judicial discretion" where "special and important reasons" exist. Guidance governing this Petition arising from a state court decision is found in Rule 19(1)(a):

> Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

Petitioners constitutional contentions allegedly involve issues of due process of law, involuntary servitude, and lack of any jurisdiction after removal and prior to remand. These issues do not muster the standard necessary under Rule 19. Rice v. Souix City Cemetery, 349 U.S. 70 (1945).

REMOVAL

The removal provisions of 28 U.S.C. §1446(e) were not violated by the circuit court proceeding to issue a mandatory temporary injunction in this instance. F & L Drug Co. v. American Central Ins. Co., 200 F. Supp. 718 (D. Conn. 1961). The propriety of

a state court proceeding once a petition for removal has been filed in federal court was resolved in Metropolitan Casualty Ins. Co. v. Stevens, 312 U.S. 563 (1941).

In Stevens this Court concluded that a state court could properly proceed after a petition for removal has been filed:

> While the opinion does not expressly consider the effect of a petition for removal on subsequent proceedings in the state court, the clear import of the decision is that the proceedings are valid if the case was not in fact removable.
>
> * * *
>
> The rule that proceedings in the state court subsequent to the petition for removal are valid if the suit was not in fact removable is the logical corolary of the proposition that such proceedings are void if the cause was removable. 312 U.S. at 566.

The Florida Supreme Court merely followed this ruling and Petitioners may not indirectly seek review of the removal order in this manner. This Court must presume that in fact it was not removable.

Moreover, the mere failure to stop the state court proceeding "we cannot say that failure to do so is a denial of a federal right if the cause was not removable." Metropolitan Casualty Ins. Co. v. Stevens, supra,

at 569.

INVOLUNTARY SERVITUDE

There is no doubt that the Thirteenth Amendment to the United States Constitution prohibits "involuntary servitude" as that phraseology has been judicially defined. Jones v. Mayer Co., 392 U.S. 409 (1968). The state decision sought to be reviewed here does not constitute a violation of the Thirteenth Amendment or any of its badges or incidents.

To accept Petitioners' claim would elevate a greyhound to a "person" within the Thirteenth Amendment which is obviously not what the enactors contemplated. The Florida Supreme Court concluded in this manner:

> A greyhound is not a 'person' as provided in the United States Constitution, Amendment Thirteen, §1. 318 So.2d at 738. (e.s.)

Flood v. Kuhn, 316 F.Supp. 371 (S.D.N.Y. 1970), affirmed 407 U.S. 258 (1972) disposed of similar "personal services" contentions concerning performance by a baseball player. The option of not playing baseball, and here of not racing greyhounds, was sufficient to dispell any concern of involuntary servitude:

> We recognize that, under the existing rules of baseball, by refusing to report to Philadelphia plaintiff is by his own act foreclosing himself from continuing a professional baseball career, a

> consequence to be deplored. Nevertheless, he has the right to retire and to embark upon a different enterprise outside organized baseball. The financial loss he might thus sustain may affect his choice, but does not leave him with 'no way to avoid continued service.' 316 F.Supp. at 281.

The state decision recognized the applicability of the Thirteenth Amendment to a personal services contract but factually determined there to be no personal services in these contracts, that the Petitioners were independent contractors, not employees, and that the Petitioners contracted to produce greyhounds at the West Flagler Greyhound Track. The contract, as found by the Florida Supreme Court, permits withdrawal by Petitioners:

> The contracts in question give the kennel owners the right to withdraw dogs providing adequate notice of the reasons for the withdrawal is given to the track. The track cannot arbitrarily refuse the owners' withdrawal or substitutions. It also provides that in the event of the withdrawal of dogs, either the track operator or the kennel owner may pursue any legal or equitable remedy, including a complaint to the State of Florida. 318 So.2d at 739.

The Petitioners' obligation to produce greyhounds to race is no different that a contractual obligation to produce a particular kind of bananas or tomatos which may be

subject to a mandatory termporary injunction. See F.E.C. Railway Co. v. Taylor, 47 So. 345 (Fla. 1908); Kellerman v. Chase & Co., 135 So. 127 (Fla. 1931); Fraser v. Cohen, 31 So. 2d 463 (Fla. 1947); Bowling v. National Convoy & Trucking Co., 135 So. 541 (Fla. 1931); Price v. Gordon, 177 So. 276 (Fla. 1937); Zetrover v. Zetrover, 103 So. 625 (Fla. 1925); State Road Dept. v. Fugoli, 123 So.2d 473 (1 Fla. DCA 1960). The "personal" responsibility of the Petitioners as an independent contractor is very limited. Wilson, et al. v. Sandstrom, et al., 317 So.2d 732, 737 (Fla. 1975). The execution of every contract and every court order requires some "involuntary action" but it does not muster to the level of involuntary servitude.

Pollack v. Williams, 322 U.S. 4 (1944), concerned the criminal prosecution of a person for failure to perform a personal service contract - involuntary labor to discharge a debt - and a statutory presumption of guilt. International Union v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949). Pollack is of no assistance to Petitioners since it presented a person with no alternative to performance of a personal service and a criminal conviction.

DUE PROCESS OF LAW

Petitioners contend that the expedited procedure, in essence, denied them due process of law. Petitioners were the moving parties seeking an emergency appeal to the Florida Third District Court of Appeal and sought an ex parte Writ of Habeas Corpus from the Chief Justice, Florida Supreme Court. If

the contention has merit, Petitioners would be estopped from making their assertions. An expeditious handling of a case is not a synonym for denial of due process. New York Times Co. v. United States, 403 U.S. 713 (1971).

Counsel for Petitioners appeared at the July 3, 1975, hearing and departed on their volition. That their decision was unwise does not make the judicial proceeding illegal. Moreover, the Circuit Court reheard all evidence at a July 7, 1975, hearing at which Petitioners' counsel exercised their discretion to stay. On both occasions Petitioners had a full evidentiary hearing in a timely fashion that, but for their decisions, could have been exercised in a meaningful manner. Although two evidentiary hearings were effectively granted Petitioners, due process does not require two evidentiary hearings. Goldberg v. Kelly, 397 U.S. 254, 256, n. 14 (1970).

Fuentes v. Shevin, 407 U.S. 67 (1972) and its aftermath of Arnett v. Kennedy, 416 U.S. 134 (1974), Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974), and Goss v. Lopez, 419 U.S. 565 (1975), concern pre-termination and ex parte hearings. The cases do not concern hearings at which Petitioners arrive, make statements, and exercise their discretion to leave, and then are accorded another evidentiary hearing. Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961).

The Petitioners attempt to state that none of them were within the jurisdiction of the circuit court. Each of the Petitioners was represented in the circuit court proceedings by counsel of record. Moreover, each testified to their outright defiance of the

injunction order:

> At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975, the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding. 318 So.2d at 735.

The Petitioners' contention that the circuit court lacked jurisdiction is not meritorious and certainly does not raise a substantial federal question.

The counter-balancing danger and irreparable harm to the State's revenue interest [$64,000/day loss], the public confidence in the State's ability to properly regulate this gambling industry, and the lack of alternate racing dates comprises an overriding public interest. Hubel v. West Va. Racing Comm'n., 513 F.2d 240 (5 Cir. 1975); Tappis v. New York State Racing & Wagering Bd., 370 N.Y.S. 2d 922 (Ct. App. 1975). The Petitioners' do not raise any substantial federal question on this interlocutory Petition for a Writ of Certiorari.

The state court decision does not rest on a substantial federal question rather it rests on the existence of factual conclusions and adequate state grounds. This Court is without jurisdiction when the decision, as

here, rests upon state grounds concerning the requirements of a mandatory temporary injunction. Steambridge v. Georgia, 343 U.S. 541 (1952). The same lack of jurisdiction conclusion must be made when whatever federal question might be said to exist is interrelated with state grounds. Duncan v. Tennessee, 405 U.S. 127 (1972); Durley v. Mayo, 351 U.S. 277 (1955).

CONCLUSION

The decision of the Florida Supreme Court sought to be reviewed is not a proper judgment or decree within the jurisdictional prescription of 28 U.S.C. §1257(3). No jurisdictional basis exists under Rule 19 to permit the granting of the Petition for Writ of Certiorari. No federal question or issue exists in this proceeding.

Respectfully submitted,

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32304

CERTIFICATE OF MAILING

I HEREBY CERTIFY that three copies of the foregoing brief of Respondent, State of Florida, in response to petition for writ of certiorari to the Supreme Court of Florida were mailed to Pettigrew & Bailey, Attorneys for Petitioners, 1820 One Biscayne Tower, Miami, Florida 33131; Hon. Stuart Simon, County Attorney, 1626 Courthouse, Miami, Florida 33130; Sibley, Givlin, Levanson & Ward, Attorneys for West Flagler Associates, Ltd., Post Office Box 390360, Miami Beach, Florida 33139; and Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for West Flagler Associates, Ltd., 150 S.E. 2nd Avenue, Miami, Florida 33131; this 15th day of December, 1975.

ROBERT L. SHEVIN

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

STATE OF FLORIDA ex rel. ROBERT L. SHEVIN, Attorney General of Florida,

Intervenors,

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Defendants.

ORDER

THIS CAUSE having come on this day to be heard upon the Motion of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, for leave of Court to appear as Intervenors, and the Court having received testimony, arguments of counsel and being otherwise and further advised in the premises, it is, upon consideration thereof

ORDERED and ADJUDGED as follows:

1. That the Motion to Intervene of the

Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, is granted.

2. That the Motion of the above Intervenors to be granted status of a party Plaintiff-Intervenor is granted.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 3 day of July, 1975.

s/ Harvie S. DuVal
JUDGE

cc: All Attorneys

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

STATE OF FLORIDA ex rel.
ROBERT L. SHEVIN, Attorney
General of Florida,

Intervenors,

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized
and existing under the laws of the
State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS
ASSOCIATION, INC., a Florida
corporation, et al.,

Defendants.

ORDER

THIS CAUSE having come on this day to be heard upon the Motion of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, for leave of Court to appear as Intervenors, and the Court having received testimony, arguments of counsel and being otherwise and further advised in the premises, it is, upon consideration thereof

ORDERED AND ADJUDGED as follows:

1. That the Motion to Intervene of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, is granted.

2. That the Motion of the above Intervenors to be granted status of a party Plaintiff-Intervenor is granted.

3. That the July 3, 1975 order granting intervention and status as a party-Plaintiff to the above Intervenors is hereby approved, ratified, confirmed and republished as of this July 7, 1975 as an order of this Court.

4. This Order is entered nunc pro tunc as of July 7, 1975.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 28th day of July, 1975.

/s/ Harvie S. DuVal
JUDGE

CC: All Attorneys

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a Limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY, FLORIDA,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., etc., et al.,

Defendants.

ASSIGNMENTS OF ERROR

As to the order of July 8, 1975, Defendants assign as error the following:

1. The order is contrary to the law.

2. The order is contrary to the facts.

3. The trial court erred in denying Appellants due process of law.

4. The trial court erred in requiring Defendants to engage in involuntary servitude.

5. The trial court erred in denying Defendants their right to trial by jury.

6. The trial court erred in prohibiting Defendants from racing dogs outside the jurisdiction of Dade County, Florida.

7. The trial court erred in entering fines without any evidence of ability to pay.

8. The trial court erred in not designating the beneficiary of the fine proceeds.

9. The fines and penalties are excessive and constitute an abuse of judicial discretion.

10. The trial court erred in entering indeterminate sentences.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida 33131

By: Richard A. Pettigrew
Richard A. Pettigrew

I HEREBY CERTIFY that a copy of the foregoing has been mailed this 4th day of August, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 SE 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida, and to James D. Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., et al.,

Defendants.

ASSIGNMENTS OF ERROR

As to the order of July 10, 1975, Defendenats assign as error the following:

1. The order is contrary to the law.

2. The order is contrary to the facts.

3. The trial court erred in denying Defendants' motion to dissolve the temporary mandatory injunction.

4. The trial court erred in refusing to allow Defendants to introduce evidence to contravene the evidence offered by West Flagler.

5. The trial court erred in denying the motion to dissolve the temporary mandatory injunction where Plaintiffs failed to show that they did not have an adequate remedy at

law.

6. The trial court erred in denying the motion to dissolve the temporary mandatory injunction where the evidence before the trial court showed that the services sought to be compelled were personal services.

7. The trial court erred in denying the motion to dissolve where Defendants were not afforded the opportunity for a full and adequate hearing and were not afforded the opportunity to ffer [sic] any defenses to Plaintiff's claim.

8. The trial court erred in denying Appellants' motion to dismiss where Plaintiff failed to annex to its complaint copies of the contracts upon which suit was brought.

9. The trial court erred in denying Appellants' motion to dismiss where the contract on its face is an unenforceable adhesion contract without mutuality of obligation.

10. The trial court erred in denying Appellants' demand for trial by jury.

11. The trial court erred in ratifying and affirming nunc pro tunc, the July 3 mandatory injunction entered following an ex parte hearing.

12. The trial court erred in denying Appellants due process of law.

13. The trial court erred in denying Appellant's the right to be free from involuntary servitude.

14. The trial court erred in denying

Appellants' motion to quash service of process.

15. The trial court erred in denying Appellants motion to dismiss for lack of jurisdiction.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida, 33131

By Richard A. Pettigrew
Richard A. Pettigrew

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 4th day of August, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 SE 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida, and to James Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership, et. al,

Plaintiffs.

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., etc., et al,

Defendants.

ASSIGNMENTS OF ERROR

As to the entry of the July 14 order, Defendants respectfully assign as error the following:

1. The order entered is contrary to the law.

2. the order entered is contrary to the facts.

3. The court erred in denying Defendants' motion to stay the effectiveness of the temporary mandatory injunction pending appeal.

4. The court erred in denying Defendants' motion to set supersedeas bond to stay the effect of the temporary mandatory injunction.

5. The court erred in denying Defendants' motion to set supersedeas bond to stay

the effect of the contempt order of July 8, 1975, pending appeal.

6. The court erred in denying Defendants' motion to enlarge the bond required of West Flagler pursuant to the July 3 mandatory injunction.

7. The court erred in refusing to take testimony as to the sufficiency of the bond required of West Flagler pursuant to the July 3 mandatory injunction.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida 33131

By Richard A. Pettigrew
Richard A. Pettigrew

I HEREBY CERTIFY that a copy of the foregoing was mailed this 31st day of July, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 S.E. 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County Courthouse, Miami, Florida, and to James Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
WEDNESDAY, AUGUST 13, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
etc., et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Upon motion of appellants, it is ordered that the above styled appeals are consolidated for all appellate purposes.

Counsel for appellant is directed to show cause in writing within ten (10) days from this date why these appeals are not either moot or subject to review by the Supreme Court of Florida in their opinion in Wilson, et al., vs. Sandstrom, etc. Case No. 47674 filed July 17, 1975 ____ So.2d ____.

A True Copy

ATTEST:

William P. Carter
Clerk District Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Robert Krawcheck
Patton, Kanner, Nadeau, Segal, Zeller & LePorte
James Whisenhand
Richard P. Brinker

/pld

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
FRIDAY, SEPTEMBER 19, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Pursuant to this court's order dated September 11, 1975, it is ordered that these appeals are hereby transferred to the Supreme Court of Florida as the proper court having jurisdiction of these matters.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Robert Krawcheck
Fatton, Kanner, Nadeau, etc.
James Whisenhand

Richard P. Brinker
Sid J. White

/h

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
THURSDAY, SEPTEMBER 11, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Circuit Ct. #75-20902

After consideration of the responses filed to this court's order dated August 13, 1975 and it appearing to the court that the appeals filed in the above causes are within the jurisdiction of the Supreme Court of Florida, therefore, pursuant to the provisions of the Florida Appellate Rules, it is ordered that these appeals be transferred to the Supreme Court of Florida for consideration and determination after five (5) days from this date unless, in the meantime, the attorneys of record for the parties, or any of them shall bring to the attention of the court that these causes should be heard and determined by this court.

A True Copy

William P. Carter
Clerk Distirct Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Givlin, Levenson & Ward
Robert Krawcheck
Patton, Kanner, Nadeau, etc.
James Whisenhand
Richard P. Brinker
Sid J. White
/h

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902 Div. 7 J. DuVal

WEST FLAGLER ASSOCIATES, LIMITED, a limited partnership, organized and existing under the laws of the State of Florida,

Plaintiff

v.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, et al.,

Defendants

ASSIGNMENTS OF ERROR

Defendants who have served assign as error to be relied upon in this appeal, the following:

1. The trial court erred in its Order dated October 17, 1975.

2. The trial court erred in considering out of court statements in the media in finding Appellants guilty of contempt and in using those statements as a basis of its Order.

3. The trial court erred in refusing to take testimony as to Appellants' ability to pay the fines.

4. The trial court erred in awarding fines which are clearly excessive and which are punitive rather than coercive, requiring trial by jury.

5. The trial court erred in failing to identify the beneficiary of the fine proceeds.

6. The trial court erred in compelling Appellants to "honor their contracts" without allowing testimony or evidence of any defenses from Appellants that those contracts were void and unenforceable and that performance of the contract called for personal services, therefore violating the 13th Amendment of the United States Constitution.

7. The trial court denied Appellants' formal rights of due process of law in denying them an opportunity for a fair and impartial hearing before rendering judgment against them.

8. The trial court erred in finding that the State of Florida has suffered damages in the amount of Sixty Four Thousand ($64,000.00) Dollars per day when no evidence supported such a finding.

9. The trial court erred in finding that Appellee West Flagler Associates, Limited, "suffered great loss of money because of the Defendants' defiance" which requires a prior finding that the contract was valid and enforceable.

10. The trial court erred in finding that Appellants were able to pay the fine of Seven Thousand Five Hundred ($7,500.00) Dollars because they advised the Supreme Court that there was no necessity of a bond for

release from jail because Appellants owned Three Million ($3,000,000.00) Dollars worth of racing dogs.

11. The trial court erred in requiring Appellants, for a period of two years, to provide personal services to Appellee West Flagler Associates, Limited, or pay the Seven Thousand Five Hundred ($7,500.00) Dollar fine or be immediately incarcerated. Such a finding without affording Appellants any opportunity to offer any defenses to the contract or to offer any evidence on their behalf is violative of Appellants' fundamental rights of due process of law and is violative of the 13th Amendment of the United States Constitution.

12. The Order is contrary to law.

13. The Order is contrary to the facts.

RESPECTFULLY SUBMITTED,

PETTIGREW AND BAILEY
Attorneys for
Defendants-Appellants
Suite 1820, One Biscayne
Tower
Miami, Florida 33130
358-9215

By: Eugene E. Stearns
EUGENE E. STEARNS

I HEREBY CERTIFY that a true copy of the foregoing was mailed to SIBLEY, GIBLIN, LEVENSON & WARD, Attorneys for Plaintiff, 1301 Dade Boulevard, Miami Beach, Florida; PATTON, KANNER, NADEAU, SEGAL, ZELLER & LaPORTE, Attorneys for Plaintiff, Northeast Airlines

Building, Third Floor, Miami, Florida; ABRAMS, ANTON, ROBBINS, RESNICK & SCHNEIDER, Home Federal Tower, Hollywood, Florida 32202; FRATES, FLOYD, PEARSON, STEWART, PROENZA & RICHMAN, Twelfth Floor, Concord Building, Miami, Florida 33130; G. KENNETH KEMPER, Suite 200, 9999 N.E. Second Avenue, Miami Shores, Florida 33138; SMATHERS AND THOMPSON, 1301 Alfred I. duPont Building, Miami, Florida; MESSRS. JOHN A. RUSH and ARTHUR T. BOONE, 404 Florida Theatre Building, Jacksonville, Florida; ALLEN, DELL, FRANK & TRINKLE, P. O. Box 2111, Tampa, Florida 33601; ROBERT L. KRAWCHECK, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida 33130; and JAMES WHISENAND, Assistant Attorney General, State of Florida, The Capitol, Tallahassee, Florida, this 17th day of November, 1975.

Eugene E. Stearns
EUGENE E. STEARNS